

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB

SEPT 11,98

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Richard Labrie

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Serial No. 75/048,254

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Evan M. Kent of Russ, August & Kabat for applicant.

Deborah E. Lobo, Trademark Examining Attorney, Law Office  
107 (Thomas S. Lamone, Managing Attorney).

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Before Simms, Hairston and Walters, Administrative  
Trademark Judges.

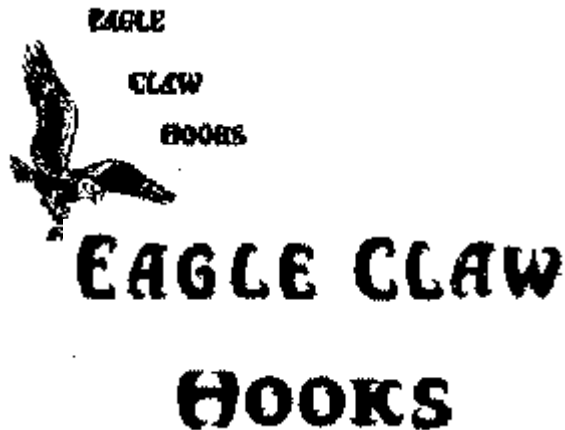
Opinion by Walters, Administrative Trademark Judge:

Richard Labrie has filed a trademark application to  
register the mark shown below for "fishing tackle bags."<sup>1</sup>



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<sup>1</sup> Serial No. 75/048,254, in International Class 28, filed January 25, 1996, based on an allegation of use of the mark in commerce, alleging dates of first use and first use in commerce as of December 14, 1995.



The Trademark Examining Attorney has finally refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d),<sup>2</sup> on the ground that applicant's mark so resembles the two previously registered marks shown below, owned by the same party, that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

for "fish hooks,"<sup>3</sup> and

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<sup>2</sup> The Examining Attorney originally refused registration, under Section 2(d), based also on three additional registrations owned by the same registrant, namely, Registration Nos. 568,797; 1,894,190; and 1,894,189. In her final refusal, the Examining Attorney withdrew her objection in connection with these three registrations.

<sup>3</sup> Registration No. 557,985 issued April 22, 1952, in International Class 28, and is owned by Wright & McGill Co. The registration includes a disclaimer of HOOKS apart from the mark as a whole. The registration was renewed for a second time as of April 30, 1992. [Sections 8 and 15 affidavits accepted and acknowledged, respectively.]

for fish hooks and artificial fish lures.<sup>4</sup>

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

In the analysis of likelihood of confusion in this case, two key considerations are the similarities between the marks and the similarities between the goods. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976). Considering, first, the marks, the Examining Attorney contends that the term EAGLE is the dominant portion of both applicant's and registrant's marks. Regarding registrant's marks, the Examining Attorney states the following.

In the word portion of the registrant's marks, i.e., EAGLE CLAW HOOKS, the terms "CLAW" and "HOOKS" have similar meaning and connotation in that both terms denote a sharp, curved object for catching and holding. The meanings of these terms indicate that both are highly suggestive and descriptive respectively of the relevant goods, i.e., fishhooks and lures.

Regarding applicant's mark, the Examining Attorney states the following.

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<sup>4</sup> Registration No. 505,204 issued December 28, 1948, in International Class 28, and is owned by Wright & McGill Co. The registration includes a disclaimer of HOOKS apart from the mark as a whole. The registration was renewed for a second time as of December 28, 1988. [Sections 8 and 15 affidavits accepted and acknowledged, respectively.]

As applicant indicates, the term "INNOVATIONS" is suggestive of something new or innovative [and in light thereof] the arbitrary and fanciful term "EAGLE" [is dominant]. Thus, the words "EAGLE INNOVATIONS" would suggest nothing more to a potential purchaser than a new "EAGLE" product or a new line of "EAGLE" products originating from the same source as the products of registrant.

The Examining Attorney contends, further, that the design of the eagle is virtually identical in both applicant's mark and registrant's mark containing an eagle design and, in each case, reinforces the term EAGLE in the mark.

Applicant argues, on the other hand, that the word portion of applicant's mark, EAGLE INNOVATIONS, differs in sight, sound and connotation from the word portion of registrant's marks, EAGLE CLAW HOOKS, despite the common term EAGLE; and that the design portions of the marks are different in that applicant's design shows an eagle with wings raised about to perch (in this case on the word INNOVATIONS), whereas registrant's design shows an eagle with wings raised in flight.

We agree with the Examining Attorney that the word EAGLE is the dominant portion of both applicant's and registrant's marks. First, in applicant's mark and registrant's mark containing an eagle design, the EAGLE word portion of each mark is reinforced by the design of the eagle. In each of registrant's marks, the term CLAW is

likely to be perceived by consumers as modifying the term HOOKS to describe a type of hook sold under the "EAGLE" mark. In applicant's mark, as the Examining Attorney notes, the term INNOVATIONS is likely to be perceived by consumers as indicating a new version or expansion of registrant's "EAGLE" product line.

We find the distinction drawn by applicant between applicant's and registrant's eagle designs to be insufficient to distinguish the marks. It is only upon close inspection, and some amount of supposition, that one can conclude that registrant's eagle is flying and applicant's eagle is landing. The test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The issue is whether the marks create the same overall commercial impression. *Visual Information Institute, Inc. v. Vicon Industries Inc.*, 209 USPQ 179 (TTAB 1980). Due to the consuming public's fallibility of memory, the emphasis is on the recollection of the average customer, who normally retains a general rather than a specific impression of trademarks or service marks. *Spoons Restaurants, Inc. v. Morrison, Inc.*, 23 USPQ2d 1735 (TTAB 1991), *aff'd*. No. 92-1086 (Fed. Cir. June 5, 1992); and *In re Steury Corporation*, 189 USPQ 353 (TTAB 1975). In this case, it is

unlikely that such distinctions in the eagle design will be noticed and/or remembered by the consumer.

Finally, regarding the marks, there is no indication in this record of any third-party use or registration of other EAGLE marks in connection with the same or similar goods. Thus, we must conclude that EAGLE is an arbitrary and strong term in connection with registrant's identified goods. Notwithstanding applicant's contentions, we find the overall commercial impression of applicant's mark and registrant's two marks to be substantially similar.

Turning to consider the goods, the Examining Attorney contends that "the goods of the applicant and registrant are related in that fish hooks and fish lures are normally carried in fishing tackle bags." In support of her position that the goods are related, the Examining Attorney submitted copies of numerous third-party registrations which include in the identifications of goods both applicant's and registrant's goods.<sup>5</sup>

Applicant notes the fact that applicant's and registrant's goods are different and contends that

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<sup>5</sup> Third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, although not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, may nevertheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993); *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988).

applicant's and registrant's goods are specialty items that are relatively expensive and purchased only after careful consideration. Applicant's arguments are unsupported by the record. Applicant has provided no evidence regarding the channels of trade of the goods at issue herein; the "specialty" nature and expense of such goods; or the sophistication of the purchasers and the care with which such goods are purchased. On the other hand, the Examining Attorney has provided sufficient evidence to warrant our conclusion that the goods of applicant and registrant are related.

Therefore, we conclude that in view of the substantial similarity in the commercial impressions of applicant's mark and registrant's marks, their contemporaneous use on the related goods involved in this case is likely to cause confusion as to the source or sponsorship of such goods.

Decision: The refusal under Section 2(d) of the Act is affirmed.

R. L. Simms

P. T. Hairston

Serial No. 75/048,254

C. E. Walters  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board